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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

19 Cr. 328 (JSR)

5 MARIO AMILCAR ESTRADA ORELLANA,

6 Sentence

7 Defendant.

8
9 New York, N.Y.
February 11, 2020
10 9:15 a.m.

11 Before:

12 HON. JED S. RAKOFF,

13 District Judge

14 APPEARANCES

15 GEOFFREY S. BERMAN

16 United States Attorney for the
Southern District of New York

17 JASON RICHMAN

Assistant United States Attorney

18 ROBERT A. FEITEL

Attorney for Defendant

19 Also Present: Erika De Los Rios, Interpreter (Spanish)
20 Paula Gold, Interpreter (Spanish)

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1 (Case called)

2 MR. RICHMAN: Your Honor, good morning. Jason
3 Richman, for the government.

4 THE COURT: Good morning.

5 MR. FEITEL: Good morning, Judge Rakoff. Robert
6 Feitel for defendant Mario Estrada. With me at counsel table
7 is my full-time paralegal, Mr. Suarez. The government has no
8 objection to his presence this morning.

9 THE COURT: Good morning.

10 We're here for sentence. The probation office has
11 calculated the offense level as 37 and the criminal history
12 category as I, for a guideline range of 210 to 262 months. Any
13 objection to that calculation?

14 MR. RICHMAN: Not from the government, your Honor.

15 MR. FEITEL: We do not object to the calculation. We
16 disagree with the presentence report as to whether or not my
17 client is eligible for the safety valve or not.

18 THE COURT: Yes. That's a separate question.

19 MR. FEITEL: Yes, sir.

20 THE COURT: I will adopt the total offense level of
21 37, the criminal history category of I, and the guideline range
22 of 210 to 262 months.

23 While I, frankly, don't think he's eligible for the
24 safety valve, I will assume for purposes of the sentencing that
25 he is because, to be perfectly frank, unless defense counsel

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1 can persuade me otherwise, I don't see how he could possibly
2 get a sentence here remotely like what defense counsel is
3 recommending, which struck me, to be frank, as absurd.

4 But let me hear from defense counsel, and then I'll
5 hear from government counsel, and then from the defendant if he
6 wishes to be heard.

7 MR. FEITEL: Good morning, your Honor. I'll take the
8 Court's comments to heart.

9 One of the reasons that I recommended the sentence
10 that I did, with full understanding that it was far below where
11 the guidelines were, was it seemed to me that if I was truly
12 arguing in good faith that the safety valve did apply in this
13 case, then you need to pick a period of time that was below the
14 safety valve eligibility, which is five years in this case, and
15 so I tried to pick what I felt would be the --

16 THE COURT: Safety valve makes him eligible for a
17 sentence below the mandatory minimum. It does not dictate that
18 it be a sentence below the mandatory minimum.

19 MR. FEITEL: No, it does not, but if I had asked for
20 more than five years, I would not have taken the time to have
21 argued in my pleadings that he was safety valve eligibility.
22 It would have been largely a moot point.

23 Having heard your Honor's comments, I'd like to revise
24 my recommendation for the Court. I'd like to ask your Honor to
25 impose a sentence of 60 months, five years, the mandatory

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1 minimum in this case. And having considered before I came here
2 the possibility that your Honor might be inclined to not go --
3 to not accept my recommendation, I did take the time to look
4 for cases that I thought were somewhat similar on the facts.
5 And although it's not in my sentencing memo, there is a case
6 from this jurisdiction before Judge Furman. It's called *United*
7 *States v. Ghahremani*, 15 Cr. 793.

8 In that case, the defendant, who was a permanent
9 resident of the United States but was a national of another
10 country, also met with and basically conspired with government
11 informants. In that case, he and his codefendant agreed to
12 sell millions of rounds of bullets to people who they thought
13 were actually representatives of the FARC, which is a terrorist
14 group in Colombia. In that case, the defendant pled guilty to
15 a drug trafficking offense and was sentenced to 66 months by
16 Judge Furman. I think that Mr. Ghahremani's case was
17 instructive, and that was a case in which his guideline was
18 also at the high end of the guidelines because the quantity was
19 more than 450 kilograms of cocaine. I think that
20 Mr. Ghahremani was someone who did not have the personal
21 history that my client does, and so I just want to address
22 briefly the issues that I think are important here, your Honor.

23 The defense and the government have presented starkly
24 different views of who Mr. Estrada is. The government has him
25 as a blood-thirsty menace to society, and I think when they did

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1 that, they took a small slice of his life and put it under a
2 microscope and tried to convince your Honor that that's --

3 THE COURT: Here's the problem I think you face. Your
4 client has a somewhat heroic upbringing. The letters I
5 received on his behalf attest to the many good aspects of his
6 character, but what does he decide to do? He decides that in
7 order to get funding for his run for the presidency of
8 Guatemala, he will agree with a vicious drug cartel to allow
9 them to bring very large quantities of this poison into the
10 United States using his position, his putative position if he's
11 elected, and his ability to appoint people to various positions
12 within the government as a way to facilitate this egregious
13 crime. I don't see how that is anything other than despicable.

14 MR. FEITEL: There is no disagreement that what he did
15 was wrong. I don't generally disagree with the Court's
16 characterizations as being despicable. My position about it,
17 and I want to be frank with your Honor, is I take no solace
18 from what happened. I think that Mr. Estrada committed a
19 egregious as crime, and I don't think anyone can say otherwise.
20 But in contrast to some of the other cases, for example, that
21 the government alludes to regarding the brother of the
22 president of Honduras, Mr. Estrada's promise in this case was
23 conditional, which was he would in the future, if elected, do
24 A, B, C, or D. And because our criminal conspiracy law finds
25 people culpable for the conspiracy at the earliest possible

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1 moment when they reach the agreement, this conspiracy charge
2 didn't even require an overt act. Because of that requirement,
3 they capture Mr. Estrada before he actually does anything. I
4 think it's left to the vagaries of chance to decide whether he
5 actually would have gone through with this or not. He remains
6 guilty notwithstanding, but it's a far cry to compare what the
7 other defendants did in the Tony Hernandez case with
8 Mr. Estrada.

9 THE COURT: Well, I think that point has some force,
10 but less force in this case than it might in others because he
11 was such a willing participant. All the evidence that I've
12 seen suggests that he was not, as you try to maintain, in any
13 sense entrapped -- of course, he waived any entrapment defense
14 when he pled guilty -- but rather, that he embraced this as the
15 way to advance his own power. And he was willing to sell his
16 government, his people, his family, and the United States down
17 the drain in order to get the funding to become president.

18 MR. FEITEL: In response, your Honor, I have read -- I
19 understand the anger about this and the dissatisfaction. No
20 one is disagreeing. And I want to be clear, the memo that I
21 filed with this Court was not an effort to minimize his
22 culpability. It's an effort to explain the circumstances.
23 This is a case in which professional informants made contact
24 with my client. Mr. Estrada is so naive that he takes no
25 effort to try to even verify the bona fides of the informants,

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1 and he doesn't do that because the people who come to him, one
2 of whom is a U.S. government informant, are people of
3 confidence with him, people of his own political party.

4 In my reading of the transcripts, I see this as
5 different. I see Mr. Estrada as agreeing, but I see the
6 informants as having prepared for what they did because at
7 every turn they keep -- at every turn in the conversations,
8 they return to the conversation about all the drugs and about
9 all the money and about all the things because, as your Honor
10 said in the *Lopez* case, the limits of what happens in cases of
11 informants is only bridled by their imaginations, and that's
12 what happened in this case to my reading of these transcripts.
13 Mr. Estrada is a willing participant. He's not objecting. But
14 the people that are controlling the narrative, that run the
15 conversations, are the informants, and I would be willing to
16 bet that before every meeting they had a group sitdown, and
17 they went over the points that they needed to make in each
18 conversation along with Mr. Estrada. I think that the biggest
19 difference between this case and some of the others, again, is
20 that he actually didn't do anything to make good on the
21 promise. The promises were in absentia.

22 Mr. Estrada is a 60-year-old man. He's here from a
23 country thousands of miles away. His family, his two children,
24 are in court today to provide support for him. So the question
25 that it comes down to is, assuming that he did what he did, how

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1 much time in jail, how much punishment is necessary to punish
2 Mr. Estrada? The government is essentially asking for a life
3 sentence, or at least for the better part of his life. I'm 61.
4 I'm going to hazard to guess that, although your Honor is very
5 youthful appearing, you might be slightly older than I am. I
6 know the difference between my capacity at 50 to 60. I assume
7 the same change will take place from 60 to 70, and it might
8 even be more advanced, and I have no hope past that because no
9 one in my family's ever gone that far. But if you give
10 Mr. Estrada a five-year sentence, that is a significant --

11 THE COURT: No, you look in pretty good shape to me.

12 MR. FEITEL: Thank you, your Honor, as does your
13 Honor.

14 But I think that it's a significant -- in all
15 seriousness, it's a significant part of the rest of his life,
16 and it's time thousands of miles from his friends and family.
17 Foreign nationals who are incarcerated in this country, I
18 think, suffer much more egregiously than people do who are
19 locals. They don't get visits. They're not eligible for
20 certain programs. Their time is much more pressured than
21 otherwise. And then at the end of their sentences, they don't
22 get to go home immediately. They're not eligible for halfway
23 houses as well.

24 I understand your Honor's dissatisfaction and the
25 points about what my client did and how it affects larger

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1 issues, but in the scope of what happened in this case,
2 Mr. Estrada's -- his conduct starts, begins, and virtually ends
3 when he signs -- when he agrees to do this, when he agrees to
4 do this with the informants. Nothing further is ever taken.
5 If he had done something more and used his office or his
6 political party or done something affirmative in the course of
7 the months that this took place to help the drug traffickers, I
8 think we would be in a far different situation, but he did
9 nothing other than agree to join with them to do this.

10 THE COURT: All right. Thank you very much. Let me
11 hear from the government.

12 MR. RICHMAN: Thank you, your Honor.

13 Judge, I won't belabor our points. I think your Honor
14 sort of hit on what we view as the heart of the disagreement
15 here, which is the government is really focused on why we're
16 here, which is because of what the defendant did. And what he
17 did was attempt to sell his country out to the Sinaloa cartel,
18 period. That's what the defendant wanted to do. He wanted
19 to --

20 THE COURT: There's no question about that, but I
21 think there's something perhaps to the defense point, which is
22 true of many stings. It wasn't like he initiated this. He was
23 a willing, eager participant, there's no question about it.
24 The suggestion of entrapment is frivolous, in my view; but
25 nevertheless, it was a sting. It was someone else coming to

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1 him and saying, someone he trusted, saying, you know, let's do
2 this crime. Oh, and while we're at it, let's up the ante and
3 do an even better crime or a bigger crime. I think that is
4 different --

5 MR. RICHMAN: Your Honor, that --

6 THE COURT: -- from a situation where he initiates.

7 MR. RICHMAN: That's a point very well taken, Judge.
8 I don't necessarily disagree. I will point to a couple of
9 facts here that I think mitigate against the force of that
10 point in this case, Judge. One of them is that during the
11 course of the investigation, the defendant bragged to the
12 sources that he was also talking to other drug dealers. Those
13 were not drug dealers who were sources. Those weren't CSs.
14 Those weren't sting operations. The defendant told the
15 sources, I'm talking to the Jalisco Nueva Generación cartel and
16 also mentioned another Guatemalan drug trafficker who wanted to
17 help him. The point about stings is very well-taken. I do
18 think in this case, on these facts, the force of it is somewhat
19 blunted by the fact that this wasn't the only nefarious conduct
20 that the defendant was up to.

21 The other thing I would note in that regard, your
22 Honor, is that -- to sort of rebut against the suggestion that
23 the defendant didn't do anything, the reason he didn't do
24 anything was because this was a sting. He had every desire to
25 do something, but he also did take steps in furtherance of this

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1 conspiracy. He himself traveled to the United States. He
2 accepted \$10,000 in cash on an undercover yacht that he thought
3 was coming from a representative of the leader of the Sinaloa
4 cartel. He was not sitting in meeting rooms just having idle
5 conversation. He was traveling. He was having meetings. He
6 also came up with ideas for moving drug money from the United
7 States to Guatemala. He came up with a very detailed plan for
8 flying a boat -- flying the boat that he met with the CSs on,
9 that it would have a United States flag, that it would be
10 helmed by certain people to move money from the United States
11 in bulk to Guatemala. So the point is well-taken that this was
12 a sting, and I understand sort of the ways in which that can
13 mitigate against a case like this one, but I do think the force
14 of that argument here is somewhat blunted.

15 So, again, I won't belabor too much, but I do think
16 that is sort of where the disagreement comes into play. The
17 government is really focused on what happened here, and what
18 happened here was the defendant attempted to sell his country
19 out. He attempted to move tons of cocaine to the United States
20 for the Sinaloa cartel while he was hoping to become president
21 of Guatemala. The seriousness of that crime can't be
22 understated. That is a huge part of the cocaine epidemic that
23 currently travails this country, and for that reason the
24 government seeks a serious sentence.

25 Your Honor, I'm sorry. I did have one

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1 guidelines-related question, and I don't know if now is the
2 time.

3 THE COURT: No. Thank you very much.

4 MR. RICHMAN: Thank you, Judge.

5 THE COURT: I'll hear anything further defense counsel
6 want to say and then from the defendant if he wishes to be
7 heard.

8 MR. FEITEL: I promise to be brief, although that
9 promise from lawyers is somewhat facetious.

10 THE COURT: It's important in any sentence to hear
11 everything that anyone wants to say. I have other matters, but
12 they take second place to a sentence. A sentence is the most
13 important thing a court does. I'm happy to hear anything you
14 have to say.

15 MR. FEITEL: With respect to the government's comments
16 about Mr. Estrada saying he was working with other cartels, I
17 think that's pure braggadocio. I don't know of any other
18 evidence of record having done it. He did talk to some other
19 people about helping to move the money, and that's the point
20 that Mr. --

21 THE COURT: No, but I think, assuming it was just
22 braggadocio, it shows how fully he embraced his new role as
23 big, bad crook.

24 MR. FEITEL: So the question that it raises -- and I
25 think it also goes to the heart of the matter, your Honor -- is

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1 the government says my client took money and he talked about
2 moving cash. That part is definitely the case. I think that
3 if you look at this sort of somewhat objectively, obviously
4 it's hard for both the litigants' representatives to be
5 completely objective, but I think that this is about the money
6 for Mr. Estrada. I think he saw this as a chance to get a lot
7 of money.

8 And with respect to the government's contention that
9 he attempted to do this or he attempted to do that, he
10 attempted to do things about drugs, no, he promised that he
11 would, and there is a difference between attempting, taking
12 steps, and making a promise. Our law captures criminal
13 liability for the promise, but in this case, the acts are
14 minimal, and I think they mostly relate to money.

15 So having said that, I'd be glad to respond to any
16 questions your Honor might have.

17 THE COURT: No, but let me hear from the defendant if
18 he wishes to be heard.

19 THE DEFENDANT: Good day, your Honor. I humbly
20 acknowledge the crime that I committed. Today I appear before
21 you, your Honor, with all due respect to express to you that
22 for quite some time I have fought for the welfare of my family,
23 for the welfare of my country, which during my entire life I
24 have always acted -- I have always taken the correct path.

25 I acknowledge that I have made a mistake for having

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1 sat down with people from my party who, in one way or another,
2 induced me to do this wrongdoing, but I do accept my
3 wrongdoing.

4 My children are here, Eduardo and Manuel Alejandro,
5 two professionals, and ever since their mother passed away,
6 it's been difficult for me, but I have led them to lead the
7 correct path in life.

8 Today, your Honor, I ask you for clemency, and I ask
9 that you allow me to get on the right path again, to continue
10 doing what's right for my country. The only objective that I
11 have had is to work to attain the well-being of people who need
12 it.

13 I want to repeat that I acknowledge my wrongdoing.
14 Your Honor, with all due respect I sent your Honor a letter
15 through my attorney.

16 THE COURT: Yes, I received it.

17 THE DEFENDANT: Thank you, your Honor.

18 And today, the only thing that I want to express to
19 you is this request, and please allow me to return to my life
20 and be more prudent in my actions. Thank you very much, your
21 Honor, and may God bless you.

22 THE COURT: Thank you.

23 MR. FEITEL: Your Honor, finally, if I could ask for
24 the Court to recommend that my client be designated to the
25 federal correctional institute in Coleman, Florida.

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1 THE COURT: I'm sorry?

2 MR. FEITEL: I would ask if your Honor would consider
3 recommending -- I know it's not binding on the marshal service
4 or the Bureau of Prisons -- that my client be designated to the
5 federal correctional institute in Coleman, Florida.

6 THE COURT: Yes, I will do that.

7 MR. FEITEL: Thank you.

8 THE COURT: Although I assume you've told your client
9 I can't order that; I can only just recommend it.

10 MR. FEITEL: I'm reluctant to tell anyone about the
11 limits of a federal judge's authority, but we did discuss this.

12 THE COURT: So I think much of what seems to me
13 pertinent has already come out in the colloquy. There are,
14 prior to these events, many laudable things that could be said
15 about this defendant, some of which has been expressed in
16 letters to the Court which I greatly appreciate. He grew up in
17 abject poverty. He overcame that. He became a good citizen.
18 He did many good deeds. He was very supportive of his family.
19 I give him credit for that, and I give him credit in real terms
20 in terms of the sentence because I think, when it comes to a
21 sentence, one has to look at the entire human being and his, as
22 the statute says, personal characteristics as well as the crime
23 that was committed.

24 But it is very hard for this Court, which has seen
25 many, many, many sentences, still not to be shocked by what

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1 this defendant agreed to do. It was precisely because of his
2 laudable background that many people believed in him, that he
3 became a candidate for president, that he created his own
4 party, that people looked to him as someone who wouldn't be
5 just another one of those all-too-frequent corrupt politicians.
6 And yet, without any meaningful hesitation, he was perfectly
7 happy, so that he could get the funds needed for his election,
8 to betray everyone who had had trust in him and his very
9 country.

10 But there's more. How was he going to betray it? He
11 was going to betray it by allowing terrible drugs to be brought
12 into the United States, and thus not only have a negative
13 effect on his own country but a negative effect on our country.
14 It was appalling. If I were to impose a sentence based solely
15 on the acts he committed, even after taking account that it was
16 a sting, and so forth, I would impose a sentence of more than
17 20 years. I am persuaded by all the positive things in this
18 defendant's life that on this day of sentence he should receive
19 some credit for it, but it only goes so far.

20 So the sentence of the Court is the defendant is
21 sentenced to 15 years in prison, that's 180 months, to be
22 followed by four years of supervised release, although that
23 will probably be not served because of the deportation. A fine
24 of \$40,000 will be imposed as recommended by probation. This
25 defendant is not in a position to pay any big fine, and in any

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1 event, the prison term, I think, serves the necessary
2 functions. There is, however, a mandatory special assessment
3 of \$100 which must be paid.

4 The terms of supervised release are, first, the
5 mandatory conditions that the defendant not commit any federal,
6 state, or local crime; that he not unlawfully possess a
7 controlled substance; and that he cooperate in the collection
8 of DNA. The drug testing condition is suspended based on the
9 Court's determination that this defendant poses a low risk of
10 personal future substance abuse. That's opposed to substance
11 abuse that he would have imposed on others.

12 There will also be imposed standard conditions 1
13 through 12. They appear on the face of the judgment and will
14 be gone over with the defendant by the probation office if and
15 when he reports to begin his period of supervised release.

16 Then there are the special conditions. First, that he
17 must obey the immigration laws and comply with the directives
18 of the immigration authorities; and second, that the fine be
19 paid in monthly installments of 10 percent of his gross monthly
20 income beginning with the second month of supervised release;
21 and thirdly, that the defendant, upon his release from prison,
22 if not otherwise detained for deportation purposes, report to
23 the nearest probation office to begin his period of supervised
24 release, though I think, as I said, that that would be unlikely
25 to happen.

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1 Now, is there a restitution requirement here?

2 MR. RICHMAN: No, your Honor. We're not seeking.

3 Thank you.

4 THE COURT: Very good. And a forfeiture requirement?

5 MR. RICHMAN: Same thing, your Honor. We're not
6 seeking.

7 THE COURT: All right. Before I advise the defendant
8 of his right of appeal -- and I will recommend Coleman as the
9 place of detention, of imprisonment.

10 Before I advise the defendant of his right of appeal,
11 anything else that either counsel wish to raise with the Court?

12 MR. RICHMAN: Your Honor, just one point, I think, of
13 clarification. The Court at the outset, I believe, stated that
14 it was assuming the safety valve applied. Is that correct,
15 Judge?

16 THE COURT: I assume the safety valve applied,
17 although, as I indicated, I thought it was academic.

18 MR. RICHMAN: Right.

19 THE COURT: I think if I had to make a determination,
20 I would probably determine the safety valve did not apply.

21 MR. RICHMAN: OK.

22 THE COURT: But I thought, in fairness to the
23 defendant, that it would be better to assume that and take that
24 into account, which I did.

25 MR. RICHMAN: Thank you, your Honor.

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1 My only, I guess, logistical point about that would be
2 to the guidelines calculation, because if the safety valve
3 applied, there would be a two-point deduction. I wanted to
4 make clear --

5 THE COURT: That's a good point. That's a good point.
6 Although the safety valve -- this would be a nonguideline
7 sentence in any event, even with that adjustment. I look at
8 the guidelines, but they are not particularly of interest to
9 me.

10 MR. RICHMAN: I understand. And then otherwise the
11 PSR has been adopted? I believe you said that. Thank you,
12 Judge.

13 THE COURT: Very good. Anything from defense counsel?

14 MR. FEITEL: No, your Honor. Thank you.

15 THE COURT: Mr. Orellana, you have a right to appeal
16 this sentence. Do you understand that?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: If you can't afford counsel for any such
19 appeal, the court will appoint one for you free of charge. Do
20 you understand that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Very good. Thanks a lot.

23 MR. RICHMAN: Your Honor, I just have, I'm sorry, one
24 other thing. There's a judicial removal order that has been
25 signed by the parties.

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1 THE COURT: OK. If you want to hand that up.

2 MR. RICHMAN: Also, the government moves to dismiss --
3 there's one open count.

4 THE COURT: That is dismissed.

5 MR. RICHMAN: Thank you, your Honor.

6 THE COURT: All right. I've signed that. I'll give
7 it to my courtroom deputy.

8 MR. RICHMAN: Thank you, your Honor.

9 THE COURT: Thanks a lot.

10 (Adjourned)

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